IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/12/2002

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THE HONOURABLE MR. JUSTICE K.P.SIVASUBRAMANIAM

W.P.No.42482 of 2002

Janani S. Karayalar R. .. Petitioner

-Vs-

1.The Chairman,
Selection Committee,
Directorate of Medical Education,
No.162, E.V.R. High Road,
Kilpauk, Chennai-10.
2.The Director of Medical Education,
No.162, E.V.R.Periyar High Road,
Kilpauk, Chennai-10.
3.The Secretary to Govt. of Tamilnadu,
Health Department,
Fort St. George,
Chennai-9. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus for the reasons stated therein.

For Petitioners : Mrs.Vijayakumari Natarajan

For Respondents : Mr.V.R.Rajasekaran,
Special Govt. Pleader.

:O R D E R

The petitioner prays for the issue of a Writ of Mandamus to direct the respondents to allot one seat from the Freedom Fighters Category to the petitioner in the first year MBBS Course for the academic year 2002-2003.

2. The case of the petitioner stated in brief is as follows:-

She applied for the MBBS Course as against Freedom Fighters Quota. The quota consists of three vacancies. The said three vacancies have to be filled up in accordance with the order of seniority which is specifically prepared for the special category of Freedom Fighters. Out of 25 names which were enlisted in the list of children of Freedom Fighters, the names of the first eight individuals are given below:-

Sl.No. Name Community Mark

1. Hemavathy R. BC 295.53
2. Suvarna S. OC 295.30
3. Poorna J. Visa BC 294.73
4. Sulthana Dhilras J. BC 294.54
5. Janani S. BC 294.18
6. Aravindh P. BC 292.76
7. Rekha C. BC 292.59
8. Janani S. Karayalar P. BC 292.44

The name of the petitioner is shown as Serial No.8.

3. Petitioner further states that the cut off marks for admission in the open category for the OC was 295.20 and for BC 293.80. Therefore, according to the petitioner, among the names of eight candidates shown above, upto Serial No.5, are entitled to be selected under the general category and therefore the three vacancies out of the Freedom Fighters Quota must have been allotted to Serial Nos.6,7 and 8. However, though candidates bearing Serial Nos.6 and 7 were called for counselling course and given admission, the petitioner herein who is the eighth candidate, has not been selected as against the Freedom Fighters Quota. Hence the above writ petition.

4. In the counter filed by the respondent while the ranking position as stated above is admitted, it is contended that the Selection Committee conducted a counselling on 27.9.2002 for admission into general category. S.Janani viz., Serial No.5 was called for counselling. However, she did not attend the counselling which was held on 27.9.20 02. Consequently, that seat available under BC category in KAP Viswanathan Medical College, was filled up by another eligible candidate from backward class community category instead of S.Janani. Subsequently, S.Janani had to be accommodated in the Freedom Fighters Quota and therefore inclusive of S.Janani and Serial Nos.6 and 7, they were accommodated as against Freedom Fighters Category. Therefore with the filling up of all the three vacancies, the claim of the petitioner could not be entertained. In view of the aforesaid circumstances, the Selection Committee is not in a position to allot her a seat. There is no basis for the allegation that she was denied admission due to casual approach and recalcitrant attitude of the respondents.

5. I have heard the submissions of both the learned counsel.

6. Learned Special Government Pleader contends that there was no irregularity in the filling up of the vacancies as against Freedom Fighters Quota and that it was only because of the circumstance that S. Janani (Serial No.5) did not attend the Counselling Course for the general category for which she was called for. Later, she being the top most person in the Freedom Fighters Category, she had to be accommodated.

7. I have considered the submissions of the learned Special Government Pleader. It is needless to point out that in normal course, the petitioner should have been admitted after accommodating Serial Nos.1 to 5 in the general category. But in view of the extraordinary circumstance of Serial No.5 not attending the Counselling Course for the general merit category, it is stated that she had been accommodated as against the Freedom Fighters Category. I am inclined to hold that the petitioner who should have been accommodated, in the normal course cannot be deprived of her seat merely due to the default on the part of S.Janani, Serial No.5. It is

not known as to under what circumstances, the said individual was accommodated as against Freedom Fighters Quota when she had failed to appear for the Counselling Course for the general category, for which she was eligible and was called upon to attend. If the said process as stated above is permitted, it would only lead to undesirable manipulation in order to accommodate a backward class candidate in the general category who will not be entitled to in the normal course and with the result denying the lawful claims of the individuals like the petitioner, who is entitled to the seat under the special category. By no stretch of imagination, can the petitioner be blamed for herself now being kept out of admission in the professional course. Serial No.5 has no justifiable right to refuse to appear for the counselling course for the general category for which she has been called, and to insist that she should be selected under Freedom Fighters Category. The process of admission is not in her choice, thereby deprive the rights of an individual like the petitioner. Petitioner cannot be penalised for the said conduct of Serial No.5 which ought not to have been permitted.

8. Therefore, with the result, I am inclined to hold that the petitioner is entitled to succeed and the respondents are directed to accommodate her as against the quota for the children of Freedom Fighters.

9. Consequently, there will also be a direction to the Medical Council of India to take into account the extraordinary circumstances under which the petitioner herein is entitled to be declared as being eligible to be admitted in the MBBS Course and the Medical Council of India is directed to grant approval for admitting her, if admitting her is likely to result in increase in the number of permitted seats. The respondents shall comply with the above order within a period of four weeks from the date of receipt of a copy of this order.

10. The writ petition is ordered subject to the above observations. No costs. Consequently, connected WPMP 62690 of 2002 is closed.

Index : Yes.
Internet: Yes.

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To
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3.The Secretary to Govt. of Tamilnadu,
Health Department,
Fort St. George,
Chennai-9.

4. Medical Council of India,
New Delhi.